

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 54

THE PEOPLE OF THE STATE OF NEW YORK

-against-

W [REDACTED] R [REDACTED],

Defendant.

RECOMMENDATION OF
DISMISSAL

IND [REDACTED]-22

INDICTMENT

Under indictment IND-[REDACTED]-22, filed on August 29, 2022, the defendant is charged with Attempted Robbery in the First Degree under Penal Law §§110/160.15(2), Criminal Possession of a Weapon in the Second Degree under Penal Law § 265.03(1)(b), Criminal Possession of a Weapon in the Second Degree under Penal Law § 265.03(3), Attempted Robbery in the Second Degree under Penal Law §§110/160.10(2)(a), Criminal Possession of a Firearm, under Penal Law §265.01-b(1), six counts of Endangering the Welfare of a Child under Penal Law §260.10(1) for conduct which occurred on July 24, 2022. On May 12, 2023, the indictment was dismissed by the Honorable Cori Weston upon application of the District Attorney's Office. Sealing was stayed until June 11, 2023, for the People to file a Recommendation of Dismissal with the court.

FACTUAL BACKGROUND

On July 24, 2022, the victim in this case (hereinafter "DP"), along with his cousin, his cousin's wife and the couples' combined six children were entering their car on Bleecker Street in Manhattan after a day of sightseeing. At approximately 11:36 p.m., a black male

with tattoos on his forearms wearing a white t-shirt and a COVID face mask walked across the street and approached DP who was standing in front of the car. This individual pulled out a firearm, pointed it at DP and said, in substance: Give me all your stuff or I'll kill you. DP grabbed at the gun and began to struggle with the perpetrator for it. DP's cousin and nephew came to DP's aid and the three of them wrestled with the perpetrator to try to gain control of the firearm. At one point while they were on the ground, the gun discharged and a bullet was fired, striking a fire hydrant on the sidewalk nearby but not striking any people. DP ultimately gained control of the firearm, struck the perpetrator in the head with it, causing a bleeding laceration, and then chased him away. DP observed the perpetrator bleeding from the head and also observed blood on his own clothing that was not his own. DP sustained scrapes to his chest and knees and was not bleeding in the same way the perpetrator was. The perpetrator fled around the corner of the block into a vehicle with at least one other person inside and drove away. DP and his family entered their car and drove until they found police assistance.

The Investigation and Evidence known at the time of the Grand Jury

Detective Nicholas Virgilio of the 6th Precinct Detective Squad was the investigating officer assigned to the case. As part of his investigation, he obtained surveillance video of the incident itself and from the surrounding area. There was no video available which depicted the defendant without a COVID face mask. Detective Virgilio also attempted to obtain surveillance video which captured the license plate number of the car the perpetrator entered after the attempted robbery but was unable to find any which clearly depicted the license plate.

An officer from the Evidence Collection Team responded to the scene shortly after the incident and took a swab from blood found on the street where the struggle had occurred

and four swabs from various locations on the firearm that had been recovered. Elimination DNA samples were also obtained from DP and his two other family members that had been involved in the struggle with the perpetrator. The swabs were then forwarded to the Office of the Chief Medical Examiner (“OCME”) for analysis.

Detective Virgilio created a Wanted Flyer that was distributed within the NYPD. On July 26, 2022, Detective Virgilio was contacted by Sergeant Cory Green of the 61st Precinct Field Intelligence Office in Brooklyn. Sergeant Green informed Detective Virgilio that the perpetrator bore extremely similar physical attributes to an individual known to him as the defendant, W [REDACTED] R [REDACTED]. He further provided Detective Virgilio with the names of the defendant’s social media accounts, some of which were public and Detective Virgilio reviewed. On July 31, 2022, Detective Virgilio conferred with Police Officer Adam Elmaadawy, of the 71st Precinct in Brooklyn. Officer Elmaadawy had previously arrested the defendant on September 3, 2020 for possession of a loaded firearm. He reviewed still photos of the surveillance video from the attempted robbery incident and told Detective Virgilio that he recognized the individual in the photos as the defendant because of his facial features (despite the COVID mask) and his distinct hair style. Additionally, Officer Elmaadawy told Detective Virgilio that he had since seen the defendant in music videos on YouTube and other social media and that the defendant currently has tattoos on his right forearm which are consistent with tattoos visible¹ on the right forearm of the robbery perpetrator and depicted in the surveillance video still photos.

I submitted a D-Order to Meta to obtain account registration and subscriber information for seven target Instagram accounts which appeared to have been associated with the

¹ While the viewer can discern that the perpetrator has tattoos on his right arm, the quality of the surveillance video and still photos are not of such that the shape of the tattoos themselves are distinguishable.

defendant. The returns provided very little personal identifying information and very few leads to follow.

We attempted to determine a reliable phone number that the defendant had been using based on review of information related to the defendant's social media accounts and phone numbers he had provided during prior arrests but were unable to do so.

The defendant was arrested on August 16, 2022. Detective Virgilio attempted to take a statement from the defendant but he declined. The defendant did also not have a cell phone on his person when he was arrested. The phone number the defendant provided as part of his pedigree information appeared to be his mother's phone number and did not appear to be used by the defendant.

We were ultimately unable to determine a reliable phone number for the defendant and therefore could not make an application for a historical cell site warrant.

When the defendant was arrested, he had a scar nearby his left temple in a location that appeared to be consistent with where DP had struck and injured the perpetrator with the firearm in his attempts to thwart the robbery. The defendant also had tattoos visible on his right arm which were photographed by Detective Virgilio.

Detective Virgilio reached out, via phone, to the manager of the defendant's building in an attempt to obtain surveillance video from the day of the incident. We had hoped to discern whether the perpetrator returned to that location and whether he had a visible injury. The individual Detective Virgilio spoke with denied being the manager of the building and claimed he did not know what the detective was talking about. When Detective Virgilio went to the building in person, he was unable to find any alternate contact information or an address to which we could send a subpoena for video.

Evidence was presented to the grand jury on August 18, 2022 and August 26, 2022 and which included testimony from DP, Detective Virgilio, Officer Elmadaawy, multiple surveillance videos, arrest photos of the defendants face and arms, and photos from the defendant's known social media. Both Detective Virgilio and Officer Elmadaawy identified the perpetrator in the surveillance videos as the defendant and Officer Elmadaawy identified the defendant in the social media photos.

Evidence obtained after the Grand Jury

In January of 2023, the People received a laboratory report from the OCME regarding DNA analysis of the swabs from the crime scene and firearm. A DNA profile from Male Donor A was determined from a swab of blood that had been found in the street. The elimination samples from DP and his two relatives were not the same profile as that of Male Donor A and therefore were not the source of the blood in the street. The results also indicated that there were two DNA contributors to the swab from the firearm slide. Male Donor A was 99.22% of the mixture. DP and his relatives were excluded as contributors to the sample. A DNA profile from the swab of the firearm handgrip was determined and the DNA profile matched the DNA profile of DP. The results indicated that there were three contributors to another swab of the handgrip. DP's DNA profile was 95.24% of the mixture and his other two relatives were excluded as contributors to the mixture. The swab of the trigger/trigger guard contained a mixture of five or more contributors and so no interpretation or comparisons were made to this sample due to laboratory policies.

The DNA results indicated that the DNA profile of Male Donor A was likely that of the perpetrator because the profile matched the profile of the blood in the street and the profile of one of the contributors to the DNA mixture found on the firearm slide. The perpetrator had bled significantly after being struck by DP with the firearm.

The profile of Male Donor A did not match any known profiles in the local DNA databank.

On February 21, 2023, a buccal swab was obtained from the defendant by Detective Virgilio and submitted to the OCME for comparison with the swabs taken from the incident scene and the firearm.


Towards the end of March, 2023, the People received a laboratory report from the OCME regarding the results of the buccal swab comparison. The results indicated that the defendant was not the source of the DNA from the blood swab from the street or one of the swabs of the firearm handgrip where a single profile was developed. The results also indicated that the defendant was excluded as a contributor to both the swab of the slide and the other swab from the handgrip.

REASONS FOR RECOMMENDATION


The perpetrator of the robbery was bleeding from his head after DP struck him with the firearm. The same DNA Male Donor A profile from the blood on the street was also found in a mixture on one of the swabs of the firearm. DP and his two family members were not a match to the Male Donor A DNA profile, making it highly likely that Male Donor A was the perpetrator of the robbery. The defendant's DNA was not a match to Male Donor A blood in the street and the defendant was excluded as a contributor to any of the DNA mixtures on the firearm that were suitable for comparison. The evidence suggests that the defendant was not the perpetrator of the robbery and therefore, the People cannot prove the case beyond a reasonable doubt.

RECOMMENDATION


Based upon the reasons discussed above, the People recommend that indictment number IND-7[REDACTED]-22 be dismissed as to defendant W[REDACTED] R[REDACTED].



Elizabeth Barry
Assistant District Attorney



Charles Whitt
Bureau Chief, Trial Bureau Trial Bureau 60



Andrew Warshawer
Deputy Chief of the Trial Division

Date: 5/31/23

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Indictment No. IND [REDACTED]-22

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